

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: LARSEN, Jesper Kristoffer
 Serial No.: 09/623,426
 Filed: April 3, 2001
 For: ANIMAL BREEDING SYSTEM
 Confirmation No.: 5642

Art Unit: 3643
 Examiner: PRICE, R.
 Washington, D.C.
 Atty.'s Docket: LARSEN=1
 Date: June 9, 2005



U.S. Patent and Trademark Office
 Customer Service Window
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314
 Sir:

Transmitted herewith is an ☐ Amendment ☒ Election with Traverse in the above-identified application.
☐ Small entity status of this application under 37 CFR 1.9 and 1.27 has been established by a verified statement previously submitted.
☒ Small entity status of this application under 37 CFR 1.9 and 1.27 has been previously asserted.
☐ A verified statement to establish small entity status under 37 CFR 1.9 and 1.27 is enclosed.
☐ No additional fee is required.

The fee has been calculated as shown below:

(Col. 1)		(Col. 2)		(Col. 3)		Small Entity		Other Than a Small Entity	
	Claims Remaining After Amendment		Highest No. Previously Paid For		Present Extra		Rate		Additional Fee
Total		Minus		0		x 25	\$	x 50	\$
Indep.		Minus		0		x100	\$	x200	\$
First Presentation of Multiple Dependent Claim						180	\$	+360	\$
TOTAL ADDITIONAL CLAIMS FEE							\$	Total	\$

- * If the entry in Col. 1 is less than the entry in Col. 2, write "0" in Col. 3.
 ** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, write "20" in this space.
 *** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 3, write "3" in this space.

The "Highest Number Previously Paid For" (total or independent) is the highest number found from the equivalent box in Col.1 of a prior amendment of the number of claims originally filed.

☒ Conditional Petition for Extension of Time
 If any extension of time for a response is required applicant requests that this be considered a petition therefor.

☒ It is hereby petitioned for an extension of time in accordance with 37 CFR 1.136(a). The appropriate fee required by 37 CFR 1.17 is calculated as shown below:

Small Entity		Other Than Small Entity	
Response Filed Within		Response Filed Within	
<input type="checkbox"/> First	- \$ 60.00	<input type="checkbox"/> First	- \$ 120.00
<input type="checkbox"/> Second	- \$ 225.00	<input type="checkbox"/> Second	- \$ 450.00
<input checked="" type="checkbox"/> Third	- \$ 510.00	<input type="checkbox"/> Third	- \$1020.00
<input type="checkbox"/> Fourth	- \$ 795.00	<input type="checkbox"/> Fourth	- \$1590.00
<input type="checkbox"/> Fifth	- \$1080.00	<input type="checkbox"/> Fifth	- \$2160.00

☐ Less fees (\$) already paid for months extension of time on

☐ Please charge my Deposit Account No. 02-4035 in the amount of \$. A duplicate copy of this sheet is attached.

☐ A check in the amount of \$ is attached (check no.).

☒ Credit Card Payment Form, PTO-2038, authorizing payment in the amount of \$510.00 is attached.

☒ The Commissioner is hereby authorized and requested to charge any additional fees which may be required in connection with this application or credit any overpayment to Deposit Account No. 02-4035. This authorization and request is not limited to payment of all fees associated with this communication, including any Extension of time fee, not covered by check or specific authorization, but is also intended to include all fees for the presentation of extra claims under 37 CFR Section 1.16 and all patent processing fees under 37 CFR Section 1.17 throughout the prosecution of the case. This blanket authorization does not include patent issue fees under 37 CFR Section 1.18.

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By:
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In re Application of:)	Art Unit: 3643
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LARSEN, Jesper Kristoffer)	Examiner: PRICE, RICHARD T.
)	
Serial No.: 09/623,426)	Washington, D.C.
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Filed: April 3, 2001)	June 9, 2005
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For: ANIMAL BREEDING SYSTEM)	Docket No.: LARSEN=1
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ELECTION WITH TRAVERSE

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Alexandria, VA 22314

S i r :

1. In response to the February 9, 2005 species restriction requirement, applicants elect species XIV with traverse. Besides claims 48-57, 67, 68 and 70, which the examiner identify as exemplary of claims directed to that species, applicant identifies claims 1-21, 23, 25, 26, 29, 33, 58, 59, 61, 63, 65 and 68 as readable upon the elected species.

2. The species restriction is traversed on the following grounds:

- (a) one or more claims generic to a plurality of species are allowable, and hence the covered species should be rejoined;
- (b) the species restriction is improper because the species are not defined in a mutually exclusive manner as required by MPEP 806.04(f);
- (c) examination of all defined species is not unduly burdensome.

2.1. The examiner asserts that there are no generic claims, while it is Applicant's position that claims 1-21, 23, 25, 26, 29, 33, 58, 59, 61, 63, 65 and 68 are generic because they each cover all of the enunciated species I-XVII. Applicants are particularly desirous that claims 1 and 3 be examined.

2.2. Since this case is examined under PCT unity rules, the examiner states that the claims to be examined must be linked by recitation of the same or corresponding special technical features.

However, there is no analysis in the restriction requirement of the technical features of any of the claims, merely a conclusory statement that such features are not "special".

In prior prosecution, the examiner rejected the then elected claims 1, 19-22, 45, 49-57, 67, 68 and 70 as anticipated by van der Lely '837 (OA mailed April 10, 2002 and remailed May 12, 2003). Applicants traversed this rejection in detail on the basis of the limitations of claim 1 (response mailed November 10, 2003).

The Examiner has not responded to Applicants' arguments and hence the "law of the case" is that the limitations of claim 1 referred to in the November 10, 2003 response constitute special technical features which distinguish van der Lely. Hence, claim 1 is an allowable generic claim, and any claim dependent on claim 1 (hence incorporating those limitations) is also generic.

If the Examiner does not agree with Applicant's comparison of claim 1 with van der Lely, and wishes to restrict applicant to elect particular embodiments of claim 1, then the restriction requirement must point out precisely what is wrong with applicant's analysis of van der Lely. The restriction requirement as written is presently procedurally and

substantively defective.

2.3. Moreover, even if the Examiner correctly opined that claim 1 did not define a special technical feature, the Examiner would still need to provide some reasoning to explain why such a special technical feature is not derivable from claims 2-21, 23, 25, 26, 29, 33, 58, 59, 61, 63, 65 or 68, as these claims were not considered to be species specific.

2.4. If it is the Examiner's position that the present election does not permit Applicants to have claims 1 and 3 examined on the merits, then Applicants have been denied due process, as none of the defined species refers to claims 1 and 3, so no opportunity was offered to elect them.

2.5. MPEP 806.04(f) says that species must be defined in a mutually exclusive manner. This rule has clearly been violated. For example, species V is a breeding system which includes a mudhole. Species VI-VIII require particular kinds of mudholes, or mudholes in combination with other features. Species V thus includes VI-VIII.

2.6. Even if there was a formal lack of unity, claims should be joined if it would not be unduly burdensome to examine them in one application. See MPEP 803, page 80-4, criterion (B).

The EPO already searched and examined all claims except (for reasons peculiar to EPO) claim 47.

The present examiner already searched and examined claims 1, 19-22, 45, 49-57, 67, 68 and 70 as evidenced by the office action mailed April 10, 2002 and remailed May 12, 2003.

Since these claims have been searched and examined, it is not a serious burden on the PTO to continue to consider them.

2.7. A further problem with the restriction is that the definition of species ignores the distinction, made in the

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claims, among 1) a breeding system per se (to which the claims associated with species I-XIII are directed, 2) an "arrangement comprising a breeding system" (to which species XIV is directed), and 3) a method (to which species XV-XVII are directed).

Claims 1-21, 23, 25, 26, 29, 33, 58, 59, 61, 63, 65 and 68 are considered generic to elected species XIV because they define a "breeding system" which is includible in the arrangement of species XIV. In this regard, please compare, e.g., claims 3 and 15-19 with claims 49-50.

Respectfully submitted,

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